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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1948

No. 691

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In the Matter of

CHRIST'S CHURCH OF THE GOLDEN RULE, a California non-profit religious corporation,

*Bankrupt,*

---

PETER PETERSEN and CLARA BELLE PETERSEN, husband and wife, and GEORGE D. PATRICK,

*Petitioners,*

*vs.*

CHRIST'S CHURCH OF THE GOLDEN RULE, a California non-profit religious corporation, bankrupt, and PAUL W. SAMPSELL, L. BOTELER, and McINTYRE FARIES, trustees in bankruptcy of the Estate of Christ's Church of The Golden Rule, bankrupt,

*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI

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## PETITION FOR WRIT OF CERTIORARI INDEX


Statement ..... 1
Jurisdiction ..... 8
Questions Raised ..... 8


## SUPPORTING BRIEF INDEX


Reference to Official Reports..... 1
Jurisdiction ..... 1
Statement of the Case..... 1
Reasons Relied on for the Allowance of the Writ..... 1

I.

A Church Corporation Under the Laws of California Holds Property Under an Express Trust for the Use and Benefit of the Ecclesiastical Society and Those in It: Its Function and Object Is the Capacity of an Agent, Holding Title, With Power to Manage and Control in the Spiritual Ends of the Church; the Ecclesiastical Body Is All Important, the Corporation Is Subservient and But a Convenience in the Temporalities of the Church..... 1

II.

The Trustees in Bankruptcy Do Not Acquire Title Nor Possession to Property Held by a Bankrupt Only as Trustee..... 4

III.

There Is No Jurisdiction of the Person or Subject Matter to Adjudicate a Religious Society a Bankrupt..... 7

IV.

The Court Will Not Permit Its Processes, Its Temple and Its Judgment of Adjudication in Bankruptcy to Be Misused for a Religious Persecution..... 17

V.

The First Amendment, Freedom of Religion, Is the Highest of the Personal Rights Guaranteed by the Bill of Rights, and the Judicial Arm of the Government Through the Bankruptcy Courts Cannot Violate This Right of Freedom of Religion ..... 22

VI.

Laches Has No Application, Confers No Jurisdiction, and Gives the Trustees in Bankruptcy No Prescriptive Right to Continue a Religious Persecution and to Flaunt and Continue to Flaunt the Constitutional Right of Freedom of Religion or to Continue to Abuse the Processes of the Court ..... 29

VII.

Persons in a Religious Society Are Proper Parties to Seek Redress to Protect Themselves and Their Religious Society and the Property of the Society ..... 34

VIII.

The Holding of the Ninth Circuit Decision in the Instant Case Is Subject to Two Interpretations ..... 36

Appendix ..... 38

## TABLE OF AUTHORITIES CITED

### Cases

Amer. & British Mfg. Corpor., In re. 300 F. 839 ..... 11

Associated Oil Co., In re. (D.C.-La.) 271 F. 788 ..... 21

Baker v. Ducker, 79 Cal. 365, 21, p. 763 ..... 3, 8

Beatty v. Kurtz, 2 Peters 566, 7 L. Ed. 521 ..... 35

Bomar v. Mt. Olive Missionary Baptist Church, 92 Cal. App. 618, 268, p. 665 ..... 3

Campbell County Hardware Co., In re, 15 F. 2d 78 ..... 9

Cantwell v. St. of Conn. 310 U.S. 296, 60 S. Ct. 900, 84 L. Ed. 1213 ..... 26

C.I.R. v. Battle Creek, 5 Cir. 126 F. 2d 405 ..... 13

Clemons v. Libert Sav. & Real Estate Co., 5 Cir. 61 F. 2d. 448 ..... 15

City of Roswell v. Mountain Sts. T. & T. Co., 10 Cir. 78 F. 2d. 378 33

Cleveland Clinic Foundation v. Humphry (CCA-Ohio) 97 F. 2d. 849, cert. denied 305 U.S. 628 ..... 32

Community Book Co., In re, (D.C.-Minn.) 10 F. 2d. 616 ..... 8

Crystal Ice & Fuel Co. (D.C.-Mont.) 283 F. 1007 ..... 8

Debs Memorial Radio Fund v. C.I.R., 2 Cir. 148 F. 2d. 948..... 14

E. C. Denton Stores, Inc., In re, (D.C.-Ohio) 5 F Supp. 307..... 20

Everson v. Bd. of Educ. of Weing, Tp 330 U.S. 1, 67 S. Ct. 405, 91 L. Ed. 711..... 22

Ettinger, In re, 76 F. 2d. 741..... 20

Fink v. Umscheid, 40 Kan. 271, 19 p. 623..... 36

Finkelstein, 2 Cir. 33 F. 2d. 278..... 4

Finn v. Carolina Portland Cement Co., 5 Cir. 232 F. 815..... 10

Fox West Coast Theatres, In re, 88 F. 2d. 212..... 19

Gareau, In re, 7 Cir. 127 F. 677..... 20

Girouard v. U. S., 328 U.S. 61, 66 S. Ct. 826, 90 L. Ed. 1084..... 22

Guarantee B. & Mtg. Co. v Hilding, 6 Cir 290 F 22..... 4

Hanover Improv. Soc. Inc. v. Gage, 1 Cir. 92 F. 2d. 888..... 13

Harrison v. Barket Annuity Fund, 7 Cir. 90 F. 2d. 286..... 14

Heintzelman Const. Co., In re, 34 Fed. Supp. 109..... 5

Hoehn v. Crew, 10 Cir. 144 F. 2d. 665..... 33

Hoile v. United Life Ins. Co., 4 Cir 136 F. 2d. 133..... 13

Hurd v. Hodge, 334 U.S. 24, 68 S. Ct. 847, 92 L. Ed. 857..... 22, 27

Jefferson Casket Co., In re (D.C.-N.Y.) 182 Fed 689..... 8

Jones v. Better Bus. Bureau, 10 Cir. 123 F. 2d. 767..... 13

Interstate Pipe Co., In re, 15 F. 2d. 61..... 4

Kansas City Ry. v. May, 2 F. 2d. 680..... 33

Lilly v. Tobein, 103 Mo. 477, 15 SW 618..... 35

London & San Francisco Bank v. Dexter Horton Co., 9 Cir. 126 F. 593, cert. denied 194 U.S. 631..... 32

Lord v. Hardie, 82 N. Carol. 241, 33 Amer. Rep. 682..... 5

Magee v. Brenneman, 188 Cal. 562, 206 p. 37..... 30

Mannix v. Purcell, 46 Ohio St. 102, 19 NE 572..... 5, 36

Merritt Oil Corpor. v. Young, 10 Cir. 43 F. 2d. 27..... 32

Mich. Sanitarium Benevolent Assn. (D.C.-Mich.) 20 F. Supp. 979 ..... 13, 15

Mississippi Valley Util. Corpor., In re, 2 F. Supp. 995..... 9

Morris v. Gilmer, 129 US 315, 9 S. Ct. 293, 32 L. Ed. 690..... 10

Mount Vernon Hotel Co. v. Block, 157 F. 2d. 637..... 19

Nance v. Busby, 91 Tenn. 303, 18 SW 872..... 36

Northern Pac. Ry. v. Boyd, 228 U.S. 482, 33 S. Ct. 554, 57 L. Ed. 931, see 9th Cir. opin. 117 Fed. 803..... 32

Permanent Com of Missions v. Pacific S. Presbyterian Church, 157 Cal. 105, 106, p. 395..... 3

Porter v. Angelo & London Paris Bank, 36 Cal. App. 191, 171 p. 845 ..... 9

Prudence Co., In re, 2 Cir. 79 F. 2d. 77, Cert. Den. 296 US 646.... 15

Regel Cleaners & Dyers v. Merlis, 2 Cir. 274, Fed. 915..... 8

Roche's Beach v. C.I.R., 96 F. 2d. 776..... 13

Sig. H. Rosenblatt & Co., In re, 2 Cir. 193 F. 638..... 12

Rudebeck v. Sanderson, 9 Cir. 227 Fed. 575..... 8

Russell v. Todd, 309 U. S. 280, 84 L. Ed. 752, 60 S. Ct. 527..... 33

Schnell v. Leander Clark College, 2 F. 2d. 17..... 35

Security Bldg. & Loan Assoc. v. Spurlock, 9 Cir. 65 F 2d. 768 15, 31

Shell v. Strong, 10 Cir. 151 F. 2d. 909..... 33

Shelly v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 90 L. Ed. 845..... 22

Slocum v. Bowers (DC-NY) 15 F. 2d. 400, aff. 20 F. 2d. 350..... 14

Smith v. Chase National Bank of City of N. Y., 8 Cir. 84 F. 2d. 608 ..... 19

Sokol v. Higgins, 2 Cir. 147 F. 2d. 774..... 13

So. Pasadena v. Pasadena, etc. Co., 152 Cal. 581, 93 p. 490..... 10

So. Steel Co., In re, (D.C.-Ala.) 169 Fed. 702..... 8

Trinidad v Sagrada Orden de Predicdores, 263 U.S. 578, 69 L. Ed. 458, 44 S. Ct. 204..... 14

Tucker v. St. of Tex., 326 U.S. 517, 66 S. Ct. 274, 90 L. Ed. 274.. 26

Union & New Haven Trust v. Eaton (DC-Conn.) 20 F. 2d. 419..... 13

Union Guar. & Mtg. Co., In re, 2 Cir. 75 F. 2d. 984..... 14

U. S. v. Ballard, 322 C.S. 78, 64 S. Ct. 882, 88 L. Ed. 1148.... 17, 23

Valley v. Northern F. & M. Ins Co., 254, U.S. 348, 41 S. Ct. 116, 65 L. Ed. 297..... 11, 29

Vassar Foundry Co., In re, 293 F. 248..... 10

Watson v. Jones, 80 U.S. 726, 20 L. Ed. 666..... 3, 24

Wheelock v. First Presbyterian Church, 119 Cal. 477, 51 p. 841 ..... 2, 35

Winget v. Rochwood, 8 Cir. 69 F. 2d. 326..... 33

Woolsey v. Security Trust Co., 5 Cir. 74 F. 2d 334..... 11

Zeitinger v. Hargadine McKittrick Dry Goods Co., 8 Cir. 244 F. 719 ..... 19

STATUTES AND TEXTBOOKS

CC 353, formerly 361a; now Corporation Code Sec. 3901-2..... 9

CC 605d (California Law in November, 1945) now Corporation Code 9002 ..... 9

30 C.J.S., 524, Equity Sec. 113..... 30

8 C.J.S., 653, Bankruptcy Sec. 193d..... 4

1 Cooley's Blackstone (3d Ed.) p. 492 (Vo. 2, p. 283)..... 6

11 USCA 766 ..... 12

11 USCA 776 ..... 12

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*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI

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*To the Honorable Supreme Court of the United States:*

Petitioners, Peter Petersen and Clara Belle Petersen, husband and wife, and George D. Patrick pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals, for the Ninth Circuit, No. 11,874, in the above-entitled cause, and show:

### Statement

Your petitioners, as persons in the religious society of Christ's Church of The Golden Rule, moved to set aside the adjudication in bankruptcy of the corporate

temporal agency of their religious society, a California non-profit religious corporation (R-26, 34), before the District Court. The Trustees in Bankruptcy and the bankrupt church corporation appeared in these proceedings (R-33).

The motion involved two separate grounds:

(a) Jurisdiction to adjudicate the corporate temporal agency of a religious society a bankrupt (adjudication void ab initio)

(b) Abuse and perversion of the adjudication which has amounted to a violation of Freedom of Religion, First Amendment, United States Constitution (adjudication set aside as to future acts, but not effecting validity of past acts of administration) R-26, 34-44.

Arthur L. Bell, the corporate president and director of the church corporation had some differences with certain state officials (R-91) and state court proceedings were instituted involving the Church corporation (R-82). The Church corporation at that time held some $2,900,000 of property (R-13), inventoried in the estate at $2,600,000 (R-51) and believed to be worth $3,500,000 at the time of the bankruptcy proceedings (R-103), and only owed unsecured creditors about $111,000 (R-103, 94, 51).

A Chapter XI proceedings under the Bankruptcy Act was attempted as a means of seeking religious freedom and protection of civil rights in the Federal Courts (R-89, 90, 104, 107-8) Mr. Bell was advised or led to believe by his counsel that bankruptcy proceedings were the placing of certain assets in the care of the Court to guarantee the payment of listed creditors (R-83); these Chapter proceedings would not interfere with the Church activities and Church property would be protected from dissipation (R-90-1).

The District Court entertained doubt as to Chapter proceedings being proper, for it might terminate in

an involuntary adjudication of a Church corporation which could not be involuntarily adjudicated a bankrupt (R-86-7).The corporation officials were advised after brief discussion (R-92-3), that the plan of arrangement would still be permitted (R-107). It was believed that on such a bankruptcy only sufficient property would be liquidated to pay the $111,000 of debts (R-95) that it was a simple case of $3,500,000 of property and $111,000 of debts, and simple cases are disposed of quickly (R-99-104); that the religious society would receive fair and just treatment in the Bankruptcy Court (R 105), upon the sale of the $111,000 of property to pay the current debts, the Court would release the Church corporation (R 96) and the religious uses and religious part would remain untouched (R 96).

The church corporation officials filed a voluntary petition (R 15). Both the voluntary petition and the Chapter XI petition showed on their face that the non-profit religious corporation was a California corporation holding property for a religious society (R 15, 3, 7).

The Church corporation officials acted without seeking the consent of any kind of membership, or any vote, or the spiritual or ecclesiastical organization of the religious society (R 96-7) in placing the Church assets and "passing the mantle of the Church" to the Trustees in bankruptcy (R 94-6).

Thereupon started a religious persecution:

(1) Those who remained "loyal" to their religious beliefs were subjected to the inquisition possible by Sec. 21A and 21J examinations, during the first year and a half of the administration (R 47). The Petitioner Petersen was subjected to the inquisition as to his current religious convictions before the Referee, by Mr. Hunt, counsel for the Trustees (R 41, 40-2)

(2) The Trustees in Bankruptcy hired private

detectives who without lawful process ransacked the personal private papers of those remaining "loyal" to their religious beliefs (R 43), seized their personal and religious papers, took them and impounded them (R 44-5)

(3) The Trustees in Bankruptcy hired a "keeper" to impound the religious publications of the religious society up to Christmas time of 1946, even current religious publications and legal papers (R 45) and prevented circulation of the religious publications (R 47)

(4) A rule of procedure in the administration of the estate was established known as the "White Case" wherein the religious beliefs of the Church were declared fraudulant and false for want of judicial proof of the truth of these religious beliefs (R 28, 55-7, 120). Those who were "dissenters" were permitted their claims to specific property and even enormous claims for services including time spent in religious instructions. Solely upon the basis of current religious beliefs, those who retained religious beliefs of the Church and who failed to promptly disassociate themselves from those who held those beliefs, were termed "loyalists" and different substantive and procedural law applied to them, and even made the subject of summary jurisdiction in bankruptcy, and their property claimed forfeit to the Trustees in Bankruptcy because of their religious beliefs and affiliations. (R 33, 57-60, 114-112, 28).

The English language does not permit a more concise statement of this rule of procedure than the following extract of the record made before the District Court in the combined hearings, of which the motion at bar was one. Mr. Hunt, counsel for the Respondent Trustees in Bankruptcy, in explaining to the District Court why Patrick, Petitioner herein, was not to

be within the rule of the "White Case," stated (R 114-5).

"Mr. Hunt: . . . There is nothing in the record to show Patrick ever repudiated any of these religious beliefs. The answers do not show that he completely severed himself from the church or he expects to do so in the future."

R 119 "The Court: There is nothing to prevent Patrick from saying 'I believe the doctrine of the church but I think Bell defrauded me or the church defrauded me,' is there?

"Mr. Hunt: But he does not repudiate the doctrines. He is willing to accept them.

"The Court: What difference does that make?

"Mr. Hunt: The record shows that Patrick still believes those doctrines in spite of anything that Bell or anybody said.

"The Court: What difference does that make? He could still be defrauded by Bell, could he not?

"Mr. Hunt: But anybody could condone fraud, your Honor; and if fraud is committed, you are not ipso facto to get your property back. You have to show that you have cancelled and you want to quit. But if you condone it as to any false statements and do nothing about it, you have condoned the fraud. A man can't blow hot and cold at the same time, your Honor.

"The Court: Would it be your position that the man would have to quit the church in order to get his property back.

"Mr. Hunt: I think he would have to quit the church in order to get his property back.

"The Court: Renounce the beliefs of the church?

"Mr. Hunt: Yes, sir. In other words, that is the very distinction between dissenters and loyalists.

"Mr. Crittenden: That is right, your Honor.

"The Court: I think that is too rough a distinction, myself.

"Mr. Crittenden: I do too.

"Mr. Hunt: It might be.

"The Court: I do not see any inconsistency in a man saying that 'I believe Bell is a scoundrel. He defrauded me. But I believe the church or the tenets of the church are sound and good and pure.' Is there any legal obstacle to his saying that?

"Mr. Hunt: Well, but how he could be defrauded if he believes in the beliefs of the church in which Mr. Bell believes? That is the point."

The Referee stated in open Court, the policy of the Trustees that in petitions for reclamation, those who have definitely severed their connections with the Church shall be governed by the "White Case" (R 59) to which counsel for the Trustees, Mr. Hunt assented.

The Trustees permitted a "dissenter" to have an automobile from the estate without even a petition for reclamation, and Mr. Hunt explained the Referee applied the doctrine of the "White Case" because she promptly disassociated herself from the Church and all people connected with it (R 59-60).

Mr. Martin, another attorney for the Respondent Trustees in Bankruptcy, stated that the White Case did not apply to the Petersens, petitioners herein, as he had not withdrawn from the "ecclesiastical society"; and Judge John W. Preston who represented a Mr. Miller found that his clients could not contest title to a ranch because they had not severed connection with the Church organization by withdrawal or otherwise, and his clients were not in a position to contest the title to their ranch or rabbitry (R 58). Mr. Martin stated this was a policy of the Trustees, and having not withdrawn or rescinded from the "ec-

clesiastical" body, there was therefore no basis for fraud or otherwise (R 58).

Mr. Martin stated that Petitioner Petersen was an active participant in the Church group, and thus could not claim his own home and restaurant (R 58-9)

(5) The temporal and secular affairs of the religious society were put into the hands of two professional bankruptcy liquidators and a man who ran a brewery, none of whom had any sympathy for the religious views of the religious society (R 27, 50) and who solicited all the donations intended for the religious society *after* the bankruptcy of its temporal agency, and who threatened those who would not make gifts to them to disburse the religious society (R 53) and claimed all services, money and inheritances of these "loyalists" *after* bankruptcy (R 61, 64, 65) until stopped by the District Court 11 months after the proceedings were instituted. When the Petitioner Petersens refused to donate their own income from their own services and business, the Referee ordered all current earnings impounded (R 65, 121-2).

(6) The Trustees in Bankruptcy in the first year and a half of bankruptcy administration collected and disbursed $2,200,000 of the funds of the religious society. Costs of administration, attorneys' fees, salaries, and overhead of administration in that period amounted to $266,000. Assets shrank to $661,000 of value. Claims of General unsecured creditors amounted to $111,364.79, but not one cent of dividend was paid (R 51). There is no indication of any dividend until pending tax matters were finally settled (R 51). A tax claim of $900,000 was suggested by General Counsel of the Treasury to be settled for $125,000 and was finally settled for $130,000, plus interest; no bona fide effort was made by the Trustees

to show the Church was exempt under Rev. Act. Sec. 101(6) or 101(18), an apostolic society and no effort to fight the state tax claim in 2 years of administration (R 52-3, 180-208, 173).

The District Court refused to hear the portion as to religious persecution and abuse of the adjudication decree, and this showing was made by offer of proof. (R 44, 111-2), The District Court denied the motion (R 112, 122). The District Court refused to find that Petitioners herein were not parties in interest (R 123-4), but despite no showing on the hearing of the motion, found laches (R 124-5). An appeal was duly taken to the United States Court of Appeals, Ninth Circuit (R127). That Court by a per curiam decision summarily brushed aside all points of law and fact and affirmed the District Court, stating that the motion did not state, and the record did not disclose any fact or facts entitling appellants to an order setting aside the adjudication (R 222).

## Jurisdiction

It is contended that the Supreme Court has jurisdiction under 11 USCA 47c, 52 Stat. 854, Chandler Act Sec. 24c and 28 USCA 347, Jud. Code Sec. 240, amended.

The Decree of the United States Circuit Court of Appeals was made November 15, 1948; a petition for Rehearing was duly made and denied January 7, 1949 (R 224).

## Questions Raised

(1) A church corporation under the laws of California holds property under an express trust for the use and benefit of the ecclesiastical society and everyone in it; its function and object is to stand in the capacity of an agent, holding title with power to manage and control in the interests of the spiritual ends of the church. The ecclesiastical body remains

all important, and the corporation is merely subservient, and is but a convenience to assist in the temporalities of the Church.

(a) A Church from its very nature cannot be put under the control and direction of a bankruptcy court, nor the bankruptcy court be vested with or exercise ecclesiastical jurisdiction, nor can the management of a solvent religious society be put under the control and direction of two professional bankruptcy liquidators and a man who owns a brewery, none of whom have any religious sympathies for the religious views of that society. Any statute that would permit this would to that extent be unconstitutional as a violation of Freedom of Religion, First Amendment, United States Constitution.

(b) Any statute that would permit such forfeiture of Church property, control or direction of its affairs by any Court, without the consent of the beneficiaries of the trust, the spiritual body or those in it, is unconstitutional as a violation of Freedom of Religion, First Amendment, United States Constitution.

(c) A corporate temporal agency under the laws of California for a religious society, is not the subject of an adjudication in bankruptcy.

(d) Property held under an express trust, does not pass to the trustees in bankruptcy of the corporation holding the legal title and having no beneficial interest in the property.

(e) A non-profit corporation under the Laws of California cannot convey all its assets without the consent of the members of the corporation, by decree of forfeiture or by any other similar voluntary act. An adjudication in bankruptcy is a decree that passes all the property by forfeiture to the trustees or Court.

(f) No trustee of an express trust with a res valued at $2,600,000 could, without the consent of the

beneficiaries, convey those assets to satisfy liabilities of only $111,000.

(g) No corporate temporal agency for a religious society under the laws of California, could dispose of its assets without value contrary to the spiritual ends nor the terms of the trust, or without the consent of the spiritual body or those in it; and anyone taking would take with notice of the express trust.

(h) Without having the spiritual body and those in it before the Court, there is no jurisdiction of the persons who own the trust, and the spiritual body and those in a religious society for that reason alone, cannot be the subject of an adjudication in bankruptcy.

(i) There is no jurisdiction over the subject matter of a religious trust for the benefit of a religious society and those in it, to adjudicate as bankrupt the trust itself, merely from a petition of a California non-profit religious corporation for its own bankruptcy by a voluntary petition, without the consent of the spiritual body or those in it.

(j) Where it affirmatively appears from the pleadings that the petitioner in bankruptcy is only an agent to manage for the spiritual ends of the religious society, has no beneficial interest in the property, and is only a bare trustee under an express trust the want of jurisdiction of the person and subject matter affirmatively appears on the face of the petition, neither the religious society, nor the trust can be adjudicated a bankrupt.

(2) The requisite reality of consent, and the appreciation of the nature and extent of the forfeiture of property by an adjudication in bankruptcy was not understood by the officials of the Church corporation. A California non-profit religious corporation cannot pass the control or direction of a religious society to any bankruptcy court, or any trustees in bankruptcy,

nor place the religious society under any Court nor invest ecclesiastical jurisdiction in any Court.

(3) The decrees, adjudications, process and temple of the Federal Judiciary, cannot be used as a religious persecution in violation of the First Amendment to the United States Constitution; and the Court on its own motion or upon any interested person's motion should terminate any such administration.

(a) To apply any substantive or procedural rule in any Court, based upon the current religious beliefs of a litigant, or to apply or withhold any relief upon the religious affiliations of any person or litigant is a violation of Freedom of Religion, First Amendment, United States Constitution.

(b) To determine that the religious beliefs of any person or society are false and fraudulent for want of judicial proof or otherwise, is HERESY. This is a violation of Freedom of Religion, First Amendment, United States Constitution.

(c) To permit claims in reclamation, to permit proof of claims for services, including tome in religious instructions, for fraud for HERESY, to anyone who will renounce the religious beliefs of his or her religious society, and promptly disassociate themselves from others in the religious society, is a religious persecution, an abuse of the jurisdiction of the Court, and a violation of Freedom of Religion, First Amendment, United States Constitution.

(d) The use of the inquisitorial methods permitted under Sec. 21a and 21J of the Bankruptcy Act, against persons by reason of their religious beliefs or church affiliations, or to inquire as to their religious beliefs is a religious persecution, and a violation of Freedom of Religion, First Amendment, United States Constitution.

(e) The unlawful searching and seizure of personal and religious papers from the living quarters of "loyalists" by officials of the Court, Trustees in Bankruptcy, by paid detectives, is a violation of Freedom of Religion, First Amendment, United States Constitution, and Searches and Seazures, 4th Amendment, United States Constitution.

(f) The seizure, impounding, and prevention of the circulation of religious literature by the Bankruptcy Court through its trustees in bankruptcy, is a violation of First Amendment, United States Constitution.

(g) The conducting of a religious society by The Bankruptcy Court AFTER bankruptcy, the solicitation of donations, contributions, and the threatening and impounding under process of the Court of income of those who refuse to donate to the Trustees in Bankruptcy, is a violation of Freedom of Religion, First Amendment, United States Constitution, and of due process, 4th Amendment.

(h) The use of the Bankruptcy Court to loot, mismanage and dissipate the Lord's Purse, held under a religious trust, and the mismanagement of over $2,000,000 in a year and a half should appeal to the discretion of the Chancellor to the ending of such an administration that would permit such an abuse. The cry of the persecuted in a religious persecution, should appeal to the discretion of the Chancellor to terminate further such abuses of the Court's temple and its office and further administration in bankruptcy.

(4) A bankruptcy Chapter XI proceedings, having been denied or ended by dismissal or otherwise, the District Court has no jurisdiction to adjudicate the petitioner; particularly without notice to interested persons.

(5) Jurisdiction of the person or subject matter to adjudicate bankruptcy cannot be conferred by laches.

(a) The trustees in bankruptcy do not obtain a prescriptive right to abuse, misuse and pervert the processes of the Federal Court; and laches will grant no power or authority where none is conferred.

(b) Laches will not be used as a means to effect an injustice as for example the carrying on of a religious persecution.

(c) Laches cannot be used to defeat a defense. It cannot be used to prevent a "shield" being held to further religious persecution.

(d) There are not two classes of citizens in these United States, one to whom the personal Constitutional rights apply and another group as to whom they do not apply, depending upon religious beliefs, church affiliations, or whether a person immediately seeks judicial relief from an invasion of his personal rights or waits until brought into court and pleads his Constitutional rights as a defense.

(6) A person in a religious society is entitled to question the jurisdiction of a decree seeking to forfeit his church's property, invade his personal Constitutional rights, and upon which a religious persecution is undertaken against him.

Wherefore said Petitioners pray that a writ of certiorari issue, and Petitioners pray generally.

HOWARD B. CRITTENDEN, JR.
*Attorney for Petitioners.*

## SUPPORTING BRIEF

### Reference to Official Reports

The Ninth Circuit decision is reported in 170 F2d. 555. There appears to be no reported decision of the matter in the District Court.

### Jurisdiction

Jurisdiction is claimed based on 11 USCA 47c and 28 USCA 347. The Ninth Circuit denied the petition for rehearing on January 7, 1949 (R 224).

### Statement of Case

The concise statement of the case, with references to pages of the record, and Questions Raised (specifications of error) are set forth in the foregoing Petition for Writ of Certiorari.

### Reasons Relied on for the Allowance of the Writ

#### I.

**A Church Corporation Under the Laws of California Holds Property Under an Express Trust for the Use and Benefit of the Ecclesiastical Society and Those in It: Its Function and Object Is the Capacity of an Agent, Holding Title, With Power to Manage and Control in the Spiritual Ends of the Church; the Ecclesiastical Body Is All Important, the Corporation Is Subservient and But a Convenience in the Temporalities of the Church.**

The law of California is well established as to the relative position of a California corporation organized as a religious corporation, in relation to the ecclesiastical body and those in it. It holds by a trust, as a subservient means for convenience of the temporalities of the Church.

*Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 P. 841, from which we quote:

"The spiritual or ecclesiastical body being dissolved, what becomes of the money held by the corporation? This question brings before us the consideration of the status of the corporation as relating to the church proper. The Civil Code of this state (original section 595) expressly permits religious bodies to incorporate; but such incorporation is only permitted as a convenience to assist in the conduct of the temporalities of the church. Notwithstanding incorporation, the ecclesiastical body is still all important. The corporation is a subordinate factor in the life and purposes of the church itself. A religious corporation like the one at bar, under the laws of this state, is something peculiar to itself. Its function and object is to stand in the capacity of an agent holding the title to the property, with power to manage and control the same in accordance with the interest of the spiritual ends of the church. It is said in Winebrenner v. Colder 43 Pa.St. 249: 'The legislature never means, by granting or allowing such charters, to change the ecclesiastical status of the congregation, but only to afford them a more advantageous civil status. The directors or trustees of the corporation, as such, have no authority whatever over church affairs. These matters rest purely with the ecclesiastical body. Whatever property stands in its name is seized to the use of the church proper. It is a trustee holding property for the use and enjoyment of the church and every member of the church is a beneficiary of that trust.' 'By the election which organized the corporation, the title became vested in the trustees and their successors, for the use of the trust, as completely as if the use had been declared by deed. * * * A trust of this character is not distinguishable in this from any other trust over which courts of equity exercise a

supervisory power.' Brunnermeyer v. Buhre, 32 Ill. 190."

The Supreme Court of the United States has held that a religious society's property is held under a *trust* for the doctrines of the Church, society, or organization.

*Watson v. Jones,* 80 U.S. (13 Wall) 679, 20 L.Ed. 666.

The Supreme Court of California in *Baker v. Ducker* 79 Cal. 365, 21, p. 763, held that property acquired by a religious society and held by its church corporation was held under a *trust;* and the parsonage obtained by contributions, could not be diverted to other uses through a majority of the members.

The Supreme Court of California in *Permanent Com. of Missions v. Pacific S. Presbyterian Church,* 157 Cal. 105, 106, p. 395, recognizes that a church corporation holds its property under a religious trust. The Court cited *Watson v. Jones,* 80 U.S. 726, 20 L.Ed. 666, in support of this proposition.

It was said in *Bomar v. Mt. Olive Missionary Baptist Church,* 92 Cal. App. 618, 268, p. 665:

"While not cited as determinative of any questions involved herein, we think the following taken from the opinion of the court in Wheelock v. First Presbyterial Church, 119 Cal. 477, 51, p. 841, pertinent:

"Notwithstanding incorporation, the ecclesiastical body is still all-important. The corporation is a subordinate factor in the life and purposes of the church proper.

"In any event, as held in that case, the corporation would be only the agent or instrument for holding title to property and managing its temporal affairs. The ecclesiastical body would still remain the real church. Under the circumstances disclosed we think, in the present case, the uncorporated religious as-

sociation known as Mt. Olive Missionary Baptist Church at all times constituted the body entitled to control both its ecclesiastical and temporal affairs, and that the incorporation never acquired any legal or ecclesiastical right to control of either of them."

It is the established law of California:

(1) That a church corporation organized under the laws of California is something peculiar unto itself.

(2) Incorporation is permitted only as a convenience in the temporalities; and incorporation does not affect the religious body which remains all important;

(3) The function and object of a church corporation is to hold and manage property in accordance with the interest of the spiritual ends of the church.

(4) Whatever property a Church corporation holds, it holds subject to a trust for the use and enjoyment of the Church and every member of the Church is a beneficiary of the trust.

(5) A Church corporation holds all its property subject to a trust as if declared by a deed. This trust is not distinguishable from any other trust supervised by the courts of equity.

## II.

### The Trustees in Bankruptcy Do Not Acquire Title Nor Possession to Property Held by a Bankrupt Only as Trustee.

The trustees in bankruptcy do not acquire title nor succeed to possession of property held under an implied or constructive trust, to which the bankrupt holds title only as trustee.

*8 C.J.S. 653,* Bankruptcy Sec. 193d.
*In re Finkelstein,* 2 Cir. 33 F.2d. 278.
*In re Interstate Pipe Co.,* 15 F.2d. 61.
*Guarantee B. & Mtg. Co. v. Hilding,* 6 Cir. 290 F. 22.

*In re Heintzelman Const. Co.,* 34 Fed. Supp. 109, the Court said:

"Property impressed with a trust continued so impressed in the hands of the trustees. Whatever title he took was subject to the valid claims and equities which might have been asserted against the bankrupt. In re Branon, 5 Cir. 62 F.2d. 959; Martin v. New York Life Co., 7 Cir. 104 F.2d. 573; Union Trust Co. v. Townshend, 4 Cir. 101 F.2d. 903; Hurley v. Atchison, Topeka & Santa Fe Ry., 213 U.S. 126, 29 S.Ct. 466; 53 L.Ed. 729; Zartman v. First National Bank, 216 U.S. 134, 30 S.Ct. 368, 54 L.Ed. 418."

In *Lord v. Hardie,* 82 N.Carol. 241, 33 Amer. Rep. 682, the Court granted recovery of possession of silver communion-ware seized by the sheriff under execution on a judgment for the minister's wages against the Church trustees. The Court pointed out that the Church trustees, a quasi-corporate body, were the naked depository of the legal title with capacity to act for the congregation; that any purchaser at execution sale would take subject to the religious trust; that the Church trustees would not able to devote the property to other purposes; and the Court raised the interesting point that property dedicated to religious uses might under the Constitutional freedom of religion be protected from legal seizure, but found it unnecessary to decide this point.

An extremely interesting and important decision is that of *Mannix v. Purcell,* 46 Ohio St. 102, 19 N.E. 572. In that case the Roman Catholic Archbishop of the City of Cincinnati incurred debts and made a general assignment for the benefit of creditors. Some 200 parcels and tracts of land were involved, and it involved the legality of mortgage by the assignee and related questions. The Court held that the property

was held under a *trust* and did not pass by the assignment for the benefit of creditors of the archbishop.

Notwithstanding this well-established law, the Bankruptcy Court and the Trustees in Bankruptcy have undertaken to seize, hold and sell the Lord's purse, held under a trust, merely because of the alleged adjudication in bankruptcy of the solvent temporal agency of the religious society.

In view of the well-established law of religious societies and their relationship to their temporal agencies in California, no such subservient agency can petition for Chapter XI proceedings, nor for voluntary bankruptcy; and certainly not without the consent of the beneficiaries of the religious trust—the ecclesiastical society and those in it. Certainly a subservient agency cannot by a voluntary petition in bankruptcy institute a decree of forfeiture of some $2,600,000 of property in the trust res merely for $111,000 of debts, upon a hope of escaping a religious persecution (but only to get into a worse one) or merely because of a dispute between the subservient agency's president and some state official.

The decree of adjudication in bankruptcy is a decree of forfeiture of all property of the bankrupt.

> *1 Cooley's Blackstone,* (3rd Ed.) p. 492 (Vol. 2, p. 283).

Certainly, no temporal agency of a religious society, who is solvent, but only seeking "protection" of the Federal Courts from a religious persecution (R 90-1, 95-6, 103, 104), can without the consent of any interested persons in the religious society (R 96-7) convey over two millions dollars worth of trust property by any means, by transfer or a voluntary decree of forfeiture, for such hoped-for "protection."

## III.

**There Is No Jurisdiction of the Person or Subject Matter to Adjudicate a Religious Society a Bankrupt.**

(1) A corporate temporal agency for a religious society holds its property under a trust for the spiritual body and those in it; and a trustee in bankruptcy does not take title or possession to any property held by the bankrupt under a trust, express, or implied or resulting or constructive. It follows that the California religious corporation could not thus form its very nature be adjudicated a bankrupt. Certainly under our Constitutional guarantee of religious freedom, the ecclesiastical society and those in it could not be adjudicated a bankrupt; nor could the individuals in a religious society be adjudicated bankrupts upon the petition of any other individual or person, solely by reason of religious affiliations.

(2) A California religious corporation, a convenience for temporal matters and subservient to the spiritual body, cannot by any voluntary act or deed, whether a decree of forfeiture by voluntary bankruptcy or otherwise, surrender $2,600,000 of assets held under trust, for $111,000 of general creditors. Any trustee who would do so would be acting beyond its powers, and so shocking as to be a nullity. Certainly with out express consent of the beneficiaries of the trust, any transfer would only pass bare legal title subject to the terms of the trust as effectively as any other trust created by deed. Where it appears that it was done to avoid a religious persecution, only to "jump from the frying pan into the fire" into a far worse religious persecution, because of the mistaken belief as to the nature and character of bankruptcy adjudication, or that bankruptcy would be conducted other than according to its reputation among the practicing bar or the general public; by the corporation president in personal differences with some state

official, it would lack the reality of consent necessary to confer jurisdiction. No agent could have this authority. The California Supreme Court in *Baker v. Ducker,* 79 Cal. 365, 21 p. 763, held that a religious corporation could not use a house and lot acquired for a parsonage for other uses, even if consented to by a majority of the members.

A president of a commercial corporation cannot file a voluntary petition in bankruptcy without the consent of the corporation.

*In re Community Book Co.,* (D.C.-Minn) 10 F.2d. 616.

*In re So. Steel Co.* (D.C.-Ala.) 169 Fed. 702.

*Regel Cleaners & Dyers v. Merlis,* 2 Cir. 274 Fed. 915.

*In re Jefferson Casket Co.,* (D.C.-N.Y.) 182 Fed. 689.

It is the Ninth Circuit rule that where there is a restrictive statute in the state requiring stockholders to consent to a transfer of all of the assets, that a voluntary petition in bankruptcy must be made by the officials of the corporation with a duly authorized resolution of the board of directors authorizing the acts, and a majority of the stockholders of the commercial corporation must consent in writing.

*Rudebeck v. Sanderson,* 9 Cir. 227 Fed. 575.

In *Crystal Ice & Fuel Co.,* (D.C. Mont.) 283 F. 1007, the Court said:

"It is settled law in this circuit that in view of statutes like those of this state of the company's incorporation, power to express this willingness (to be adjudicated bankrupt) is with the stockholders, and not with the directors. See in re Quartz Gold Mining Co., (D.C.-Ore.) 157 F. 243, affirmed in Van Eamon v. Veal (1908) 158 F. 1022, 85 CAA 547; Bell v.

Blessing (Cal. 1915) 225 F. 750, 141 CCA 34, Rudebeck v. Sanderson (Wash. 1915) 227 F. 575, 142 CCA 207."

What it does not appear that the by-laws were followed in calling a stockholders' meeting, the adjudication in bankruptcy by a voluntary petition was vacated.

*In re Campbell County Hardware Co.,* 15 F.2d. 78.

Where the stockholders meeting was held without notice, the voluntary petition in bankruptcy was void and the adjudication vacated. Although stockholders can ratify acts of corporate officials, they cannot ratify and make valid any adjudication on an invalid petition.

*In re Mississippi Valley Util. Corpor.,* 2 F.Supp. 995

A non-profit corporation is governed in such matters by the General corporation law in the California code.

*CC 605d* (California law in November, 1945) Now Corpor. Code 9002

General corporation law in effect in California in November, 1945, prohibited transfer of all of the assets of a corporation without the written consent of the stockholders.

*CC 343,* formerly 361a; now Corporation Code Sec. 3901-2

This law, when numbered CC 361a was construed to prohibit and make *void* a sale by a corporation of all its assets where there was *no proof* of a consent by the shareholders.

*Porter v. Anglo & London Paris Bank,* 36 Cal. App 191, 171 p. 845

in which it was said quoting from *So. Pasadena v. Pasadena, etc. Co.,* 152 Cal. 581, 93 p. 490:

"This enactment (CC 361a) is not, on its face, a mere negative or prohibitive statute, forbidding that which before was permitted. It is both affirmative and negative in its terms. * * * It expresses a consent to such a transfer in the manner prescribed, as well as prohibition against such transfer in any other mode. * * * * It provides ordinary business corporations of the power they previously possessed to dispose of their entire property, franchise, and business, as a whole at the will of a mere majority of the stockholders, of less than two-thirds of them * * *."

"In the absence of a showing that such a sale was consummated in conformity with the statutory requirements, the trial court correctly concluded it was void as against the plaintiff * * *."

In the instant case, the record shows that there was never any consent of any members of any kind to any filing of any proceedings, either bankruptcy or the Petition under Chapter XI (R 96-7, 18-20, 10).

Where it appears that there is no jurisdiction, it is the duty of the Court to go no further, but to dismiss the adjudication and proceedings.

*Morris v. Gilmer,* 129 US 315, 9 S.Ct. 293, 32 L.Ed. 690

Where there is no jurisdiction to adjudicate a bankrupt, the Court may act sua sponte and dismiss the action over which it has no jurisdiction. Jurisdiction can be raised at any time during the litigation.

*Finn v. Carolina Portland Cement Co.,* 5 Cir. 232 F. 815

If drawn to the court's attention, that the adjudication in bankruptcy is a nullity, the court is bound to protect its jurisdiction on its own motion, and vacate the adjudication.

*In re Vassar Foundry Co.,* 293 F. 248

The bankrupt cannot waive the jurisdiction of the court, and thus give jurisdiction where there is none.

*In re Amer. & British Mfg. Corpor.,* 300 F. 839

It is the duty of the Court to determine for itself if it has jurisdiction, for neither consent, waiver nor estoppel can give jurisdiction or permit to proceed.

*Woolsey v. Security Trust Co.,* 5 Cir. 74 F2d. 334

It affirmatively appeared in both the Petition for Chapter XI proceedings (R 3-4) and in the voluntary petition (R 15) that the Petitioner corporation was a California religious corporation for a religious society. Where the lack of jurisdiction affirmatively appears in the proceedings, the adjudication in bankruptcy will be set aside, even after 17 months of administration and even where the bankrupt's officials assisted the court and trustees in the administration of the estate.

*Valley v. Northern F. & M. Ins. Co.,* 254 US 348, 41 S.Ct. 116, 65 L.Ed. 297

in which it said:

"Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as a nullity. They are not voidable, but simply void, and this even prior to reversal."

(3) The District Judge dismissed the plan of arrangement and then adjudicated the church a bankrupt. The dismissal was by the District Court dismissing the Chapter proceedings by denial of the

petition which attempted to initiate it[1] and then attempted to adjudicate the religious corporation a bankrupt.

(a) After dismissal of a proceedings in bankruptcy, the Court has no jurisdiction to hear or determine any controversy between petitioning creditors and the firm alleged a bankrupt.

*In re Sig. H. Rosenblatt & Co.,* 2 Cir. 193 F. 638

(c) The applicable statute, *11 USCA 766* (portions are in the supplement of this brief) provides that where an arrangement fails, there is either an adjudication after notice and hearing *or* a dismissal of the proceedings, whichever may be in the interest of creditors.

There was a contest as to the validity of the filing of the petition, and the right of the court to make any reference on it (R 20), and notice had been given as to the legality of the Chapter proceedings, but *no notice* to creditors or those in the religious society or other interested persons as required under *11 USCA 776* was given, nor was the District Court's actions taken in the interest of creditors. The District Court acted in the conjunctive "and" both dismissing the proceedings and then attempting to adjudicate the Court a bankrupt, not in the alternative "or" of the statute either dismissing or adjudicating a bankrupt. Having dismissed the proceedings, no court would have jurisdiction to immediately make a judgment of adjudication of

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[1] The order states (R 22) "* * * that the Debtor's petition for an arrangement under Section 322, Chapter XI, of the Bankruptcy Act as amended, be and said petition is hereby denied without prejudice to the right of the Debtor hereafter to file a further petition for an arrangement under Sec. 321 * * *, if so advised."

status of bankruptcy against a party to the proceedings already dismissed.

Furthermore, the District Court rightfully entertained a doubt as to the validity of a Church filing Chapter proceedings, for only a commercial, business or moneyed corporation can be under a Chapter proceedings, for it cannot be involuntary made a bankrupt.

*Hoile v. United Life Ins. Co.,* 4 Cir. 136 F2d. 133,

*Mich. Sanitarium Benevolent Ass'n.,* (DC-Mich.) 20 F.Supp. 979.

Provisions of the state law of incorporation that it was a non-profit corporation has a predominate influence upon the Court in bankruptcy proceedings, if it is claimed it were a business, commercial or monied corporation.

*Hoile v. United Life Ins. Co.,* 4 Cir. 136 F2d. 133.

A corporation, entity or trust may engage in a commercial enterprise for profit, does not effect the character of its activities, if the ultimate destination of all net earnings is for religious, charitable or other eleemosynary purposes exclusively. There are a line of tax cases on this point.

*Roche's Beach v. C.I.R.,* 96 F2d. 776;

*Sokol v. Higgins,* 2 Cir. 147 F2d. 774;

*Jones v. Better Bus. Bureau,* 10 Cir. 123 F2d. 767;

*Hanover Improv. Soc. Inc. v. Gage,* 1 Cir. 92 F2d. 888;

*Union & New Haven Trust v. Eaton,* (DC-Conn.) 20 F2d. 419;

*C.I.R. v. Battle Creek,* 5 Cir. 126 F2d. 405;

*Slocum v. Bowers,* (DC-NY) 15 F2d. 400, aff. 20 F2d. 350;

*Debs Memorial Radio Fund v. C.I.R.,* 2 Cir. 148 F2d. 948;

*Trinidad v. Saçrada Orden de Predicdores,* 263 US 578, 69 L.Ed. 458, 44 S.Ct. 204.

One of the religious doctrines of the religious society at bar is that Christianity can be lived and applied in every day life not merely talked about; and its ministry includes the spreading of its teachings of Christianity by precept and example, as well as by the written and spoken word. Its illustrations of its teachings include every day activities; and that its ministry may support the activities of spreading its teachings by their religious illustrations makes it not a venture for profit, for by its very terms, all net income must be and was used exclusively for the religious purposes of the church. Respondent Trustees contended in the Circuit Court that this doctrine of their religious faith confers jurisdiction, for the money earned and used in the Church ministry used to spread its ministry, makes it a commercial, monied or business corporation, despite its incorporation.

The statutes under which a corporation is incorporated, and the provisions of the charter that it is organized for non-profit tax purposes are conclusive.

*Harrison v. Barker Annuity Fund,* 7 Cir. 90 F2d. 286.

In determinating the character of a corporation as to whether it is one that may be adjudicated a bankrupt, the test is the powers conferred by the chapter and the statutes under which it is incorporated and not the activities of the corporation.

*In re Union Guar. & Mtg. Co.* ,2 Cir. 75 F2d. 984;

*Security B. & L. Assoc. v. Spurlock,* 9 Cir. 65 F2d. 768;

*In re Prudence Co.,* 2 Cir. 79 F2d. 77, Cert. Den. 296 US 646;

*Clemons v. Liberty Sav. & Real Estate Co.,* 5 Cir. 61 F2d. 448.

Furthermore, it is the policy of the law that money and property dedicated to religious, charitable and eleemosynary purposes, be of necessity used for that purpose. For this reason they may not be forced into bankruptcy.

*In re Michigan Sanitarium Benevolent Assoc.,* DC-Mich. 20 F.Supp. 979.

Few would contribute to eleemosynary funds and corporations if the funds could be diverted from the trust, by a voluntary or involuntary bankruptcy, merely because a difference between an official of the fund or corporation and some state official developed and some $2,600,000 of assets could be dissipated or forfeited for some $111,000 of debts. Even stronger is the case where the funds are owned by the spiritual body and those in it, and were held by a temporal agency in trust to manage and control in the interests of the spiritual body who is all important and the corporation subservient and but a mere agent for the temporalities of the spiritual body.

(4) Of course, a religious society's corporate temporal agency from the nature and according to the California law under which it holds property for the spiritual body and those in it under a trust, and by reason of our constitutional Bill of Rights and our heritage of freedom of religion, cannot be made the subject of an adjudication in bankruptcy.

We have searched the reported decisions of all Anglo Saxon jurisprudence for a decision involving the adjudication of a religious society or its corpora-

tion as a bankrupt, and can find none. We can find none where a trust as such, apart from the beneficiaries, was adjudicated a bankrupt, probably because equity will marshal assets, supervise trusts, and equitably apportion proceeds among the creditors of a trust.

Religious liberty and the Constitutional Guaranty of the First Amendment is such that no bankruptcy court should undertake to administer a church. We trust this honorable Court will by its decision prevent a repetition of this horrible persecution, perversion of the court's processes and scandalous administration that no other Church may have to bear such suffering nor any other religious group such indignities.

We believe the record amply demonstrates:

(1) That there was no reality of consent by the president of the Church corporation, to place the temporal agency of the Church into the clutches of the bankruptcy court and its followers.

(2) There was no consent of the spiritual body or any of its members, for the temporal agency of a solvent trust, to be adjudicated a bankrupt.

(3) There was no consent by any member of any kind, either in the spiritual body or member in the corporation, to the alleged acts of bankruptcy or the filing of the voluntary petition.

(4) A temporal agency, a California religious corporation, by its very nature is not the subject of an adjudication in bankruptcy. Certainly not with $2,600,000 of assets and only $111,000 debts.

(5) The District Court having denied and dismissed a petition for Chapter XI which does not lawfully lie, cannot then adjudicate it a bankrupt, acting in the conjunctive contrary to statute, for there remains no proceedings in which to act or have jurisdiction.

(6) The basic and primary Constitution Guar-

antee of Freedom of Religion is such that no Court can exercise control and direction over the society, place two professional liquidators in bankruptcy and a brewery owner over the society and run it, and decree forfeited the property of the religious society.

*This is a case of first impression where a Church has been adjudicated a bankrupt.*

## IV.

### The Court Will Not Permit Its Processes, Its Temple, and Its Judgment of Adjudication in Bankruptcy to Be Misused for a Religious Persecution.

The record shows an exceedingly strong set of facts of abuse, misuse, and perversion of the Court's processes, temple, and its judgment of adjudication in bankruptcy in a religious persecution without precedent in the reported decisions of American jurisprudence.

1. A *heresy* trial (as the term is used in *U.S. v. Ballard,* 322 U.S. 78) based upon religious beliefs; jurisdiction for that *heresy* decree is based upon the adjudication in bankruptcy.

2. Two professional liquidators and an operator of a brewery none with religious sympathies, were put in charge and *ran* the Church and its seminaries, etc., for almost a year after the adjudication solely upon and by color of the adjudication in bankruptcy.

3. A course of conduct of extensive inquisitions under Secs. 21a and 21J of the Bankruptcy Act were held over a year and a half period aimed against those remaining loyal to the beliefs of their religion. Bankruptcy law permits a broad inquisition, copied after the famous Roman jurisprudence (used and the basis of the Spanish Inquisition) concerning any acts, conduct or property of the Church. The sky is the limit in these inquisitions. Adjudication in bankruptcy is the basis and authority for these inquisitions.

4. A course of conduct of suppression of the religious literature and its seizure and effective throttling of its dissemination. Again the adjudication is the right upon which claim is made to all religious literature, including that published after bankruptcy.

5. A course of conduct of searches and seizures, without color or right, of the personal papers of those belonging to the religious society. A double outrage—both of unlawful searches and seizures and of unlawful suppression of religious literature, only possible by reason of the adjudication.

6. Heresy trial of the beliefs of the religious society, determination of church membership, and exercise of summary jurisdiction for the forfeiture of individual's property for religious beliefs and religious affiliations. All based upon and stemming from the adjudication in bankruptcy.

7. A course of conduct of running a church, claiming all money and property and services of those having religious beliefs and church affiliations; all based upon the adjudication.

8. A course of conduct of embroiling the estate in tax litigation, and failing to make any bona fide attempt to wind up the litigation, or plead tax laws applicable, Secs. 101(6) and (18) Adjudication gives the trustees in bankruptcy the sole control of all these matters and litigation, and the bankruptcy court jurisdiction. No creditor can be paid nor the estate or its administration closed while the tax litigation is pending!

9. An administration of over two and a half million dollars of the Lord's purse, with enormous administrative expenses, and not one cent paid as a dividend to general creditors. It is the adjudication which is the decree of forfeiture of this property and the authority for this outrageous and scandalous conduct.

10. A course of conduct where different rules of substantive and procedural law are applied based solely upon the current religious beliefs of the parties in the same litigation; not stated by one counsel but two of Trustee's counsel as a policy of the administration. The adjudication is the basis for the exercise of this ecclesiastical jurisdiction by the referee in bankruptcy and the inquiry and application of law and rights upon current religious beliefs.

The Court will not permit its powers to be exercised in the aid of a fraud, or for improper purposes.

*Zeitinger v. Hargadine McKittrick Dry Goods Co.*, 8 Cir. 244 F. 719.

The Zeitinger Case rule was quoted with approval by the Ninth Circuit in *Mount Vernon Hotel Co. v. Block*, 157 F2d. 637:

"* * * We further realize that 'the District Judge, in adjudicating upon a voluntary petition in bankruptcy, is not a ministerial, but a judicial, officer, whose first duty is to see that those who minister in the temple of justice shall not invoke his authority for the accomplishment of a fraud' Zeitinger v. Hargadine-McKittrick Dry Goods Co., 8 Cir. 244 F. 719."

The Bankruptcy Court may under certain circumstances refuse to assume or retain jurisdiction where it appears the court is being used in connection with improper purposes.

*Smith v. Chase National Bank of City of N.Y.*, 8 Cir. 84 F2d. 608.

The Ninth Circuit in *In re Fox West Coast Theatres*, 88 F2d. 212, indicated that a bankruptcy adjudication could be set aside as to future or prospective matters. The Court indicated the remedy was proper where the bankrupt had not authorized the petition, or the court had no jurisdiction, or to

prohibit a fraudulent party from reaping the fruits of a fraudulent judgment. Misuse of the Court's jurisdiction or temple does not effect jurisdiction, but merely goes to further proceedings.

Certainly, after a year and a half of administration and the cash disbursals of $2,200,000, and the creditors not having anything, and no immediate prospects of the creditors being paid until the tax matters be settled, no argument can be propounded in the interest of creditors for a continuation of this awful abuse; for the "loyal" persons can with the return of the property upon the adjudication being terminated and set aside, pay general creditors of $111,000 in full. Certainly in the interest of creditors, no argument can be propounded to uphold the adjudication. Certainly in the interest of religious freedom or administration of justice no argument can be propounded for upholding the adjudication.

In granting a motion to set aside an adjudication in bankruptcy, the court said in *In re Gareau,* 7 Cir. 127 F. 677:

> "But aside from that, it would be the duty of the court sua sponte, when it is led to believe that its jurisdiction has been imposed upon, to inquire into the facts by some appropriate form of proceedings, and for its own protection against fraud or imposition, to act as justice may require."

The Second Circuit in *In re Ettinger,* 76 F2d. 741, in upholding an order setting aside an adjudication in bankruptcy held that when a court believes its jurisdiction has been imposed upon, it can act sua sponte on its own motion, or any interested person.

It was held in *In re E. C. Denton Stores, Inc.,* (D.C. Ohio) 5 F.Supp. 307, that the adjudication in bankruptcy was judicial and not a ministerial act, and it was the court's duty to see those who minister the

temple of justice shall not invoke it to accomplish a fraud; and vacated the adjudication.

In *In re Associated Oil Co.,* (D.C.-La.) 271 F. 788, it was held that the bankruptcy court would not permit its agency to be misused and annulled the adjudication.

Even if there were jurisdiction, which there is not, and the corporate temporal agency of the Church could submit its property to a decree of forfeiture, which it cannot:

(a) The court cannot idly sit by and permit its temple to be misused in a religious persecution, particularly of the kind shown in this record.

(b) If there ever were anything that would appeal to the conscience of the Chancellor, it would be the cry of help from the persecuted in a religious persecution shown in this record, from the harsh heel of the bankruptcy gang.

(c) The court can act sua sponte, of its own motion, to prevent such misuse of its temple.

(d) The Court can annul the adjudication to prevent any future misconduct or misuse of its process; and save the persecuted from further torments on the rack of the inquisition, stop further exercise of ecclesiastical jurisdiction by the bankruptcy court and its referee, stop further squandering of money of the Lord's purse by thep rofessional liquidators in bankruptcy in the conduct of the religious persecution, save those who adhere to the beliefs of their own choosing from being stripped in bankruptcy summary proceedings, save some vestige to the meaning of religious freedom in this nation. The Court is not powerless to act. It can act sua sponte upon the facts in the record, if for any reason the present remedy does not appeal to the chancellor.

## V.

**The First Amendment. Freedom of Religion, Is the Highest of the Personal Rights Guaranteed by the Bill of Rights, and the Judicial Arm of the Government Through the Bankruptcy Courts Cannot Violate This Right of Freedom of Religion.**

The United States Supreme Court in the recent Land Covenant Cases has held that the judicial arm of the government cannot be invoked to transcend any of the individual personal rights guaranteed and established by the Constitutional Bill of Rights.

*Hurd v. Hodge,* 334 U.S. 24, 68 S.Ct. 847, 92 L.Ed. 857.

*Shelly v. Kraemer,* 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 845.

It was said in Everson v. Bd. of Educ. of Ewing, Tp. 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711:

"The 'establishment of religion' clause of the First Amendment means at least this: * * * Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and visa versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between the Church and State' * * *"

The Supreme Court in holding that religious freedom transcends the right of the state to require its citizens to actively bear arms said in *Girouard v. U.S.,* 328 U.S. 61, 66 S.Ct. 826, 90 L.Ed. 1084:

"The victory of freedom of thought recorded in our Bill of Rights recognizes that in the domain of conscience there is a moral power higher than the state. Throughout the ages men have suffered death rather than subordinate their allegiance to God to the authority of the State. Freedom of religion guaranteed by the First Amendment is the product of that struggle. As we recently stated in United States

v. Ballard, 322 U.S. 78, 86, 88 L.Ed. 1148, 1154, 64 S.Ct. 882, 'Freedom of thought, which includes freedom of religious beliefs, is basic in the society of free men. West Virginia State Board of Edu. v. Barnette, 319 U.S. 624, 87 L.Ed. 1628, 147 ALR 674.' The test oath is abhorrent to our tradition."

The Supreme Court said in *U.S. v. Ballard,* 322 U. S. 78, 64 S.Ct. 882, 88 L.Ed. 1148:

"But on whichever basis that court rested its action, we do not agree that the truth or verity of respondents' religious doctrines or beliefs should have been submitted to the jury. Whatever this particular indictment might require, the First Amendment precludes such a course, as the United States seems to concede. 'The law knows no heresy, and it is committed to the support of no dogma, the establishment of no sect.' Watson v. Jones, 13 Wall 679, 728, 20 L.Ed. 666, 676. The First Amendment has a dual aspect. It not only 'forestals compulsion by law of the acceptance of any creed or practice of any form of worship' but also 'safeguards the free exercise of the chosen form of religion.' Cantwell v. Connecticut, 310 U.S. 296, 84 L.Ed. 1213, 1217, 60 S.Ct. 900, 128 ALR 1352. 'Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be.' Id. 310 U.S. pp. 303, 304, 84 L.Ed. 1217, 1218, 60 S.Ct. 900, 128 ALR 1352. Freedom of thought, which includes freedom of religious belief, is basic in the society of free men. West Virginia State Board of Educ. v. Barnette, 319 U.S. 624, 87 L.Ed. 1628, 63 S.Ct. 1178, 147 ALR 647. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to the followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They cannot be put to proof of their religious doctrines or beliefs.'

"The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. Murdock v. Pennsylvania, 319 U.S. 105, 87 L.Ed. 1292, 63 S.Ct. 870, 891, 146 ALR 81. As stated in Davis v. Beason, 133 U.S. 333, 342, 33 L.Ed. 637, 639, 10 S.Ct. 299 'With man's relation to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure peace and prosperity, and the morals of its people, are not interfered with."

The Supreme Court in *Watson v. Jones,* 80 U.S. 679, 20 L.Ed. 666, recognized that the basic heritages of religious freedom of this nation prevented the secular courts from inquiring into or adjudicating upon any ecclesiastical or religious matters; stated the English rule to the contrary, but refused to follow it because of freedom of religion.

The Constitutional Bill of Rights including Freedom of Religion precludes the adjudication in bank-

ruptcy of any religious society. Any statute that would sanction or permit such a judicial interference with religious liberty is to that extent unconstitutional. Any statute, law or custom that would permit two professional bankruptcy liquidators and a brewery operator with no religious sympathies for the Church at bar to meddle, touch or concern themselves with the religious society is clearly unconstitutional. Any statute that would permit the judicial arm of the Federal Government, through its bankruptcy court, to transcend the rights of religious liberty is to that extent unconstitutional. Any acts of the Federal Government, whether through the judiciary or its officers known as Trustees in Bankruptcy that would participate in the affairs of Christ's Church of The Golden Rule, would to that extent be unconstitutional. Any adjudication that would justify or permit inquisitions as to acts or conduct of the religious society is to that extent unconstitutional, and certainly any inquiry as to religious affiliations or beliefs are clearly a persecution, for no judicial body can inquire of any persons religious beliefs or church affiliations. The very nature of bankruptcy and its administration and its inquisitorial powers are such that any religious organization, that could be adjudicated a bankrupt can be persecuted, crushed and destroyed as the case in bar shows.

The record shows by statements of counsel for the Trustees the extent to which the administration had degenerated. (R 114-121, 58-60) A heresy trial was held and for want of judicial proof of the truth of or falsity of certain religious beliefs, they were held fraudulent. The instrument of the inquisition and persecution was forged. It was and is now being applied by those who would renounce their Church and its beliefs as fraudulent would have the right to rescind and withdraw from the society and as a

consequence would have the help of the Referee, the Trustees and their counsel to any property and any claim, even for their time in attending religious instructions! Those who would not renounce their Church and religious beliefs as fraudulent and promptly disassociate themselves from the religious society would have a different rule of law, substantive and procedure, applied. The Bankruptcy court would openly inquire and determine their religious beliefs and church affiliations. Summary proceedings in bankruptcy is the scene of this shameful proceedings. Upon proof of religious beliefs and affiliations, the unfortunate would be stripped of his property! If he objected, pressure shown in the record would be used. He had not renounced his religious beliefs, and thus he could not contest title to his own property, and would be enjoined from taking his own earnings from his own business pending the litigation! The record shows this clearly!

A religious society with our concepts of religious liberty just does not mix with bankruptcy proceedings calculated to deal with possibly dishonest debtors attempting to conceal property.

The trustees in bankruptcy, from the Lord's Purse which they have seized, undertake and finance the persecution. They hire full time paid keepers to impound literature of the religious society and prevent its circulation. How much stronger these facts are than *Cantwell v. St. of Conn.*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 and *Tucker v. St. of Tex.*, 326 U.S. 517, 66 S.Ct. 274, 90 L.Ed. 274. The Trustees in Bankruptcy with the Lord's Purse they seized, hired paid detectives to search and seize the private papers in the possession of those in the religious society. A more ghastly act would be hard to imagine. It becomes not only inconvenient and costly to hold the beliefs—for the property and earnings of the believers (loyalists) are seized—but they cannot

safely even study and read their own religious society's current publications for fear of an unlawful entry and a ransacking and seizure of their personal papers!

This is just not the misconduct of a few individuals, it is the results of a religious society falling into the clutches of the harsh hand and severe practices of the bankruptcy court. A competent trustee, Mr. Faries, was eventually the successor in office of the brewery owner. He tried to intercede as the record shows, but his able efforts came to naught to prevent further persecutions. From the nature of things, religious liberty cannot exist if a Bankruptcy Court with its powers and authority and practices gets its clutches upon a church.

No court under our Constitutional Bill of Rights can exercise ecclesiastical jurisdiction. Yet that is just what a bankruptcy court does exercise when it undertakes to administer the affairs of a religious society.

No person can by laches lose his or her right to religious liberty by not immediately defending an invasion of one's personal liberties, but waits until the persecution becomes unbearable and evidence to prove the persecution is conclusive beyond a doubt.

No Trustee in Bankruptcy can obtain a perscriptive right to continue a religious persecution through the judicial arm of the Federal Government. Yet that is the very ground urged in the answer to the motion of the oppressed when asking for protection of their rights of religious liberty, First Amendment, and the protection of their Church. As if jurisdiction that never existed could be conferred by esto freedom of religion, an individual personal right guaranteed by the Constitutional Bill of Rights. *Hurd v. Hodge,* 92 L.Ed. 857, 68 S.Ct. 847. Freedom

of religion is the highest and the most favored, and the most jealously guarded of the constitutional rights. No one who has given of his time in war in the services of his country and has learned the relative values of things to personal rights could conceive that money or property could be weighed in the same scales with personal rights, particularly those guaranteed in the Constitutional Bill of Rights. The Supreme Court of the United States has held that they cannot.

We believe that the instant record shows the strongest possible violation of religious liberty guaranteed under the United States Constitution:

1. An adjudication in bankruptcy of a Church.

2. Exercise of ecclesiastical jurisdiction by a Bankruptcy Court.

3. Condemnation and persecution of a whole society for heresy.

4. Continued religious inquisitions not heretofore equalled by precedent in this nation.

5. Seizure and conduct of a religious society by outsiders not in sympathy, and a course of conduct of solicitation of donations after bankruptcy, and running of the temporal affairs of the Church.

6. Unlawful search and seizure of individuals because of religious beliefs of their religious literature.

7. Unlawful seizure of religious literature and prevention of its use or circulation; a suppression of freedom of press.

8. Dissipation of not small sums, but over two million dollars of cash from the Lord's Purse, in the first year and a half of administration; no payment on any general creditor's claim; over a quarter of a million dollars for overhead of administration, attorney fees, etc. for the unprecedented persecution, in but the first year and a half of administration.

9. Application of substantive and procedural rights depending upon religious beliefs and willingness to disassociate oneself from a religious society.

10. The misuse, abuse and perversion of the judicial arm of the Government.

We defy any person to show a record of violations of Freedom of Religion in any reported case to equal these.

The petitioners are not without remedy. They ask the Court to cut the Gordian Knot—to set aside the adjudication in bankruptcy and to restore to them their Church and to protect them from further religious persecution.

## VI.

**Laches Has No Application, Confers No Jurisdiction, and Gives the Trustees in Bankruptcy No Prescriptive Right to Continue a Religious Persecution and to Flaunt and Continue to Flaunt the Constitutional Right of Freedom of Religion or to Continue to Abuse the Processes of the Court.**

(1) The District Court found the doctrine of laches applicable although there was no testimony in the record, and no indication of any part of the record during the proceedings to substantiate such a doctrines. R 124-5.

As in *Valley v. Northern F. & M. Ins. Co.,* 254 U.S. 348, 41 S.Ct. 116 65 L.Ed. 297, the Petition for Chapter XI proceedings and petition for bankruptcy (R 3-4, 15) showed by affirmative allegations that the California non-profit religious corporation was conducting affairs for the benefit of a religious society, and it followed under the California law that the religious corporation held under a trust for the spiritual body and those in it, with power to control and manage in the interest of the spiritual ends and was merely a subservient agency. In the *Valley v. Northern F. & M. Ins. Co.* decision the Supreme

Court held that 17 months and conduct of assisting the trustees and court would not raise the defense of estoppel, to prevent the bankrupt from moving to set aside the adjudication.

(2) The statute of limitation in California is two years on an oral or implied contract (CCP 339), 3 years for trespass or injury or taking of property (CCP 338), 4 years on a written contract (CCP 337) and 5 years for possession of real property (CCP 336). Suits or proceedings against a person who acts as a trustee in bankruptcy must be brought within 2 years after the estate is closed (11 USCA 29d). If laches be applicable by analogy to the statute of limitations there remains ample time to seek redress and protection of any of the wrongs by these proceedings, for they may be brought within 2 years after the estate is closed, and it appears a long time before the estate may be closed.

(3) Laches is a bar to the use of equity as a sword not its use as a shield.

*Magee v. Brenneman,* 188 Cal. 562, 206 p. 37.
*30 C.J.S.,* 524, Equity Sec. 113.

In the instant case, Petitioners are seeking a shield by way of defense. Petitioners were among those hailed into court by Respondent Trustees in Bankruptcy and charged by summary proceedings seeking the Petitioners' property forfeited for religious beliefs and affiliations (R 33, 113-122). Petitioners are among those interrogated in the inquisition (R 41). Petitioners are among those whose defenses were struck because of religious beliefs yet permitted to others who had renounced their religious beliefs and promptly disassociated themselves from those in the religious society (R 59-60, 114-8). The Petitioners Petersens refused to make donations of their earnings from their restaurant and were therefore compelled by the Referee to impound their earnings (R

121-2). The Petitioner Patrick's stock in trade in his occupation as a plumber was seized and claimed forfeit for his religious affiliations (R 113-121). The defense of the religious persecution and lack of jurisdiction to adjudicate the church were raised before the Referee on these proceedings and to clearly present the matter, the motion was presented on the review of those cases from the Referee before the District Court (R 33). The Petitioners were using but a shield to the religious persecution and to the adjudication which was the instrument used against them and their religious society.

(3) There was no evidence offered by the Respondent Trustees in Bankruptcy in support of their contention, and they can only point to their selfserving declaration made ex parte called their "Report" (R 32) showing the amount of property they seized and the Lord's Purse they squandered.

In such bankruptcy proceedings, the appellate court reviews the evidence and forms its own independent opinion.

> *Security Bldg. & Loan Assoc. v. Spurlock,* 9 Cir. 65 F2d. 768.

In it the Court said:

> "It is the duty of the court on this appeal to review the evidence and form its independent judgment upon the sufficiency thereof to support the adjudication * * *."

(4) No hard and fast rule has been laid down by the courts for the application of the doctrine of laches. It is not raised by a determined period of time. There is one common element in all the cases, involving this defense; there must be not only unnecessary delay on the part of the plaintiff but also a change of conditions during the period of delay as

to make it inequitable to permit the plaintiff to enforce his claim.

*London & San Francisco Bank v. Dexter Horton Co.,* 9 Cir. 126 F. 593, cert. denied 194 U.S. 631.

Laches is not a bar against a beneficiary of a trust, and the right of action by a beneficiary for protection of property in a trust does not arise until there is open disavowel of the trust.

*Merritt Oil Corpor. v. Young,* 10 Cir. 43 F2d. 27.

A delay of 10 years in a creditor's attack upon a railroad reorganization under the supervision of equity, will not raise the defense of laches. The doctrine of laches rests upon equitable principles which are neither arbitrary nor technical, and what amounts to laches depends largely upon the circumstances of each individual case and ultimate inquiry being as to which side would fall the balance of justice in sustaining or denying the defense. No delay of the plaintiff creditor induced any stockholder or bondholder to go into the railroad reorganization, and thus there was no injury from the delay.

*Northern Pac. Ry. v. Boyd,* 228 U.S. 482, 33 S. St. 554, 57 L.Ed. 931; see 9th Cir. opin. 117 Fed. 803.

The doctrine of laches turns on the individual facts in each case and cannot be used as an instrument of oppression.

*Cleveland Clinic Foundation v. Humphry,* (CC A-Ohio) 97 F2d. 849, cert. denied 305 U.S. 628.

No absolute rule applies to the defense of laches

or staleness of demand; and equitable principles govern. It cannot be invoked to defeat justice.

*Hoehn v. Crew,* 10 Cir. 144 F2d. 665.

If the suit in equity is brought within the analogous statutory period of the statute of limitations, the burden is on the defendant to show prejudice from the changed conditions, due to delay.

*Shell v. Strong,* 10 Cir. 151 F2d. 909.

Mere lapse of time alone does not constitute laches.

*Winget v. Rochwood,* 8 Cir. 69 F2d. 326.
*Kansas City Ry. v. May,* 2 F2d. 680.
*City of Roswell v. Mountain Sts. T. & T. Co.,* 10 Cir. 78 F2d. 379.
*Russell v. Todd,* 309 U.S. 280, 84 L.Ed. 752, 60 S.Ct. 527.

(5) There are two kinds of jurisdiction: that of the person and that of the subject matter. (a) Lack of jurisdiction as to the subject matter to adjudicate bankruptcy in the case at bar by reason of the Constitutional provisions of the Bill of Rights, Freedom of Religion, the nature of a religious society and its means of holding property through a temporal agency have been fully covered. Jurisdiction to adjudication in bankruptcy over the subject matter *cannot be conferred by laches.* (b) Lack of jurisdiction for want of the person before the Court at the time of the attempted adjudication, for there was never the requisite consent due to the state of mind of the church corporation president as shown in the record, the lack of consent of any membership which is a requisite of any such placing of the corporation before the court, the fact that the property was held under a trust and neither the spiritual body nor those in it were before the court, and bankruptcy does not pass property held in trust by the bankrupt,

is shown. Jurisdiction over the person *cannot be conferred by laches.*

(6) If laches were applicable, then the Trustees would have a prescriptive right to continue the religious persecution, and all remedy as to future acts are barred. If laches be applicable to prevent the Petitioners from defending themselves and their religious society from the abuse, misuse and perversion of the Court's processes and misuse of its temple, it would be prospective in operation.

(7) There are not two classes of citizens in these United States, those to whom the Constitutional Bill of Rights applies and another class to whom it does not apply. Constitutional rights guaranteed to the individual, as Freedom of Religion, are not lost except by violent overthrow of our system of government, our judiciary and our Constitution. If those who suffer infringement of their personal Constitutional rights by wrongful acts of others cannot plead their inalienable personal Constitutional rights when brought into court to be subjected to an inquisition as to their religious beliefs, their property sought forfeited for religious beliefs and affiliations as a defense to these outrages, simply because the plaintiffs in those outrageous actions claim they have continued the outrages for such a long time, then all concepts of justice are at an end, and there are two classes of citizens, one who cannot claim their Constitutional rights as their shield to an unlawful attack against them.

## VII.

**Persons in a Religious Society Are Proper Parties to Seek Redress to Protect Themselves and Their Religious Society and the Property of the Society.**

The Respondent Trustees in Bankruptcy proposed a finding that the Petitioners were not parties in interest, but the District Court refused to so find, and struck the portion from the order (R 123-4).

It is established law, that those in a religious society may bring an action for the society even if there be a board of trustees of the society.

*Wheelock v. First Presbyterian Church,* 119 Cal. 477, 51 p. 841.

The Church corporation, the subject to the adjudication was a party to the proceedings before the District Court, before the Ninth Circuit, and this proceedings (R 33).

In *Beatty v. Kurtz,* 2 Peters 566, 7 L.Ed. 521, an action was brought by several plaintiffs to protect the property of their Luthern Church, alleging they were trustees of the Church. The Court stated that the question of proof of their capacity of Church trustees need not be considered, as mere parishoners may sue without joining all others in the Church; and that in a voluntary association, some can sue for the others in the society.

In *Lilly v. Tobein,* 103 Mo. 477, 15 SW 618, the court held that individuals in the Church could sue to establish a will passing title to the Catholic Church of Lexington, Mo. The Missouri law is the same as the California law of the *Wheelock Case* that the ecclesiastical group is not incorporated, and the corporation acts only as an agent for the temporalities, and an individual in the Church may sue to protect the established property rights of the Church.

The Eighth Circuit in *Schell v. Leander Clark College,* 2 F.2d. 17, held that a single person in a religious society can sue or defend on behalf of all of the congregation (Church of United Brethren of Christ, etc.); that a single person in the religious society could enjoin the trustees of the incorporated college from conveying the endowment and campus of the college to others; and the Board of the corporation are mere administrative agents for the Church and

its members, empowered to do certain acts as mere agents.

In *Fink v. Umscheid,* 40 Kan. 271, 19 p. 623, plaintiff, one in a congregataion from whom money was collected to acquire a church farm, so that the income from its rentals could be used to support the parish and its priest, could sue to recover from a purchaser who took with notice; and the court could determine if the property was held upon a trust for this purpose. *Mannix v. Purcell,* 46 Ohio St. 102, 19 NE 572 it was held that those in a congregation of the Roman Catholic church belonged by attending a certain church, and the group in the congregation were transitory and indefinite and constantly changing; yet one in that congregation could be a party to an action involving lands of the Church; that a pious trust was of necessity indefinite as to its beneficiaries, but any in the group were proper parties to enforce the trust and protect the society's property.

In *Nance v. Busby,* 91 Tenn. 303, 18 SW 872, where there was a split in the Baptist congregation, the Court held that the Church corporation holds title in trust and the right to sue and defend depends not on corporation membership but on the relationship to the Church—the ecclesiastical society. This is the same rule as California in the *Wheelock v. First Presbyterian Church case* (supra).

**VIII.**

**The Holding of the Ninth Circuit Decision in the Instant Case Is Subject to Two Interpretations.**

The Ninth Circuit by its Per Curiam opinion in a 15-line decision *without the citation of a single authority or the giving of a single reason* stated that "The motion did not state, nor does the record disclose, any fact or facts entitling appellants to an order setting aside the adjudication."

This is subject to two possible constructions:

(1) That the Constitution does not apply to certain persons of a certain religious faith or affiliations. That those in the religious Society of Christ's Church of The Golden Rule have neither right nor remedy under the law or the Constitution which the Court is bound to dignify with its usual custom of citation of authority or giving of a reason or comment upon a contention any party in the litigation. In the Ninth Circuit, rights and remedies depend upon lack of certain religious affiliations or religious beliefs; and those lacking that religious affiliation or religious belief will be treated differently, with at least citation of some authority, the discussion of some contentions or the giving of some reasons in the decisions of the Court.

(2) That the Ninth Circuit condones and approves of the adjudication in bankruptcy of a Church, the placing of those in the religious society under the yoke of the bankruptcy court solely by reason of their religious affiliations and the control of the Church under the Bankruptcy Gang, *a question of law of first impression* in this case; the investing of the bankruptcy court with ecclesiastical jurisdiction, with inquisitorial powers to inquire into the acts, conducts and property of a church including the personal current religious beliefs of the various individuals coming before it; the decree of *heresy* (fraud for want of proof of religious beliefs), the application of procedural and substantive law, with different rules depending upon the current religious beliefs of the party before it; searches and seizures otherwise unlawful but justified by the bankruptcy of a church; suppression of religious literature; forfeiture of property for religious beliefs of those in the certain religious society. The Court can see nothing requiring even a comment when any of the matters shown in the record comes before it in the instant matter.

Under either construction, it is obvious that Freedom of Religion, First Amendment, United States Constitution, has a far different, if any, meaning in the Ninth Circuit than in any of the other circuits or in the reported decisions of the Honorable above-entitled Court.

Wherefore, your petitioners respectfully pray that a writ of certiorari issue for the reasons above specified to the end that said judgment of the United States Court of Appeals herein complained of may be reviewed by this Honorable Court.

PETER PETERSEN,
CLARA BELLE PETERSEN,
GEORGE D. PATRICK,
*Petitioner,*

By HOWARD B. CRITTENDEN, JR.,
*Attorney for Petitioners.*

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## APPENDIX

California Civil Code Sec. 343 SALE *R TRANSFER OF ENTIRE ASSETS. (Requisite authorization: Mode of sale) No corporation may sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of its property and assets except under section 344 of this title (corporate mortgages), unless under authority of a resolution of its board of directors and with the approval of the principal terms of the transaction and the nature and amount of the consideration by vote or written consent of shareholders entitled to exercise a majority of the voting power of such corporation. Such approval may be given before or after the adoption of the resolution by the board of directors, and before or after any such transfer or disposition. Such sale, lease, conveyance,

exchange, transfer or other disposition may be made upon such terms and conditions and for such consideration, which may be money, property, shares of stock and/or other securities of any other corporation or corporations, domestic or foreign, as the board of directors may deem for the best interests of the corporation. The articles may require on such proposal the vote or consent of a larger proportion of the shareholders or the separate vote of a majority or a larger proportion of any class or classes of shareholders (added by Stats. 1931, p. 1801; Am.Stats. 1933, p. 1384).

11 USCA 776 reads:

If an arrangement is withdrawn or abandoned prior to its acceptance, or is not accepted at the meeting of creditors or within such further time as the court may fix, or if the money or other consideration required to be deposited or the application for confirmation is not filed within the time fixed by the court, or if confirmation of the arrangement is refused, the court shall * * *

(1) (Where petition was filed in a bankruptcy proceedings under Section 721)

(2) Where the Petition was filed under Section 722 of this title, enter any order, upon hearing after notice to the debtor, the creditors and such other persons as the court may direct, either adjudicating the debtor a bankrupt and directing that bankruptcy be proceeded with pursuant to the provisions of this title or dismissing the proceedings under this chapter, whichever in the opinion of the court may be in the interest of the creditors.